

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512

LIPSON NEILSON P.C.  
JOSEPH P. GARIN, ESQ.  
Nevada Bar No. 6653  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500/FAX (702) 382-1512  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

RIVKIN RADLER LLP  
MICHAEL A. TROISI, ESQ. (*Pro Hac Vice Pending*)  
BRIAN L. BANK, ESQ. (*Pro Hac Vice Pending*)  
926 RXR Plaza  
Uniondale, NY 11556-0926  
(516) 357-3000/FAX (516) 357-3333  
[Michael.Troisi@rivkin.com](mailto:Michael.Troisi@rivkin.com)  
[Brian.Bank@rivkin.com](mailto:Brian.Bank@rivkin.com)

*Attorneys for Defendant*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PROJECT LION LLC, d/b/a CRUSH d/b/a  
GREEK SNEEK, PROJECT M LLC d/b/a LA  
COMIDA, and PROJECT W LLC, d/b/a LA  
CAVE, Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

vs.

BADGER MUTUAL INSURANCE COMPANY

Defendant.

Case No.: 2:20-cv-00768-JAD-VCF

**DEFENDANT BADGER MUTUAL  
INSURANCE COMPANY'S  
MOTION TO DISMISS PLAINTIFFS  
PROJECT LION LLC,  
PROJECT M LLC, AND PROJECT  
W LLC'S COMPLAINT**

Defendant BADGER MUTUAL INSURANCE COMPANY ("Badger"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves this Court for an order dismissing Plaintiffs PROJECT LION LLC, d/b/a CRUSH d/b/a GREEK SNEEK, PROJECT M LLC d/b/a LA COMIDA, and PROJECT W LLC, d/b/a LA CAVE's Complaint in its entirety for failure to state a claim upon which relief can be granted. In further support of this motion, Badger respectfully refers the Court to the attached Memorandum of Points and Authorities, which is adopted and incorporated as if fully set

1 forth herein, and respectfully requests that this Court dismiss all claims brought against  
2 Badger for failure to state a claim upon which relief can be granted.

3 DATED this 26<sup>th</sup> day of May, 2020.

4 LIPSON NEILSON P.C.

5 

6 By: \_\_\_\_\_  
7 JOSEPH P. GARIN, ESQ.  
8 Nevada Bar No. 6653  
9 9900 Covington Cross Drive, Suite 120  
10 Las Vegas, Nevada 89144

11 RIVKIN RADLER LLP  
12 MICHAEL A. TROISI, ESQ. (*Pro Hac Vice*  
13 *Pending*)  
14 BRIAN L. BANK, ESQ. (*Pro Hac Vice Pending*)  
15 926 RXR Plaza  
16 Uniondale, NY 11556-0926

17 *Attorneys for Defendant*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **INTRODUCTION**

20 Defendant Badger Mutual Insurance Company ("Badger") respectfully submits this  
21 Memorandum of Points and Authorities in support of its motion pursuant to Rule  
22 12(b)(6) of the Federal Rules of Civil Procedure seeking dismissal of Plaintiffs Project  
23 Lion, LLC, d/b/a Crush d/b/a Greek Sneek ("Crush"), Project M LLC d/b/a La Comida  
24 ("La Comida"), and Project W LLC, d/b/a La Cave ("La Cave")'s (collectively, "Plaintiffs")  
25 Complaint in its entirety.

26 In this action, Plaintiffs, individually and on behalf of a putative class of others  
27 similarly situated, sue Badger for anticipatory breach of their commercial property  
28 insurance policies on the basis that they expect Badger to deny coverage of their  
business interruption and extra expense losses purportedly stemming from the COVID-  
19 pandemic. Remarkably, however, none of the named Plaintiffs ever submitted a  
claim to Badger for such coverages and, as such, each of them has failed to satisfy a

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512

1 material condition precedent to bringing this suit, thus entitling Badger to dismissal of  
2 their claims.

3 Furthermore, even if these Plaintiffs had properly notified Badger of their losses,  
4 as their respective policies expressly required, Badger would nonetheless be entitled to  
5 dismissal of the Complaint because it is devoid of any factual allegations that Badger  
6 engaged in conduct indicating that Badger would not or could not substantially perform  
7 its duties under the policies, as is required under Nevada law to state a claim for  
8 anticipatory breach of contract.

9 Finally, Plaintiffs' claims for declaratory judgment also must be dismissed  
10 because the Declaratory Judgment Act only creates a remedy and does not give rise to  
11 new substantive rights. Since Plaintiffs' underlying claims for anticipatory breach of  
12 contract fail for the reasons set forth herein, Plaintiffs' attendant claims for declaratory  
13 judgment also necessarily fail.

14 As such, and for the reasons discussed in more detail below, Badger respectfully  
15 requests that this Court issue an Order pursuant to Rule 12(b)(6) of the Federal Rules  
16 of Civil Procedure dismissing the Complaint in its entirety, along with such other and  
17 further relief as the Court deems just and proper.

### 18 **BACKGROUND**

19 The following statement of facts is based upon the allegations set forth in the  
20 Complaint, which are treated as true solely for the purposes of this motion. See  
21 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2007). Badger does not concede in any respect  
22 the truth or accuracy of Plaintiffs' allegations and rejects Plaintiffs' "conclusory  
23 statements" and "threadbare recitals" of the elements of their alleged claims. See id.

24 On April 28, 2020, Plaintiffs filed the Complaint on behalf of themselves  
25 individually and all other persons similarly situated, including a so-called "Nationwide  
26 Class" and a "Nevada Subclass" of Badger insureds, asserting that the Badger  
27 insurance policies at issue are "all risk commercial insurance policies" under which  
28 Badger was paid premiums in exchange for its promise to pay Plaintiffs' and the other

putative class members' losses for claims covered by the policies. See Joseph P. Garin Decl., Ex. A, at ¶¶ 32, 83. Specifically, under the business interruption coverage, Badger agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension or interruption of operations during the "period of restoration" caused by direct physical loss or damage. See Garin Decl., Ex. A, at ¶¶ 84-85. Under the Extra Expense coverage, Badger agreed to pay for its insureds' necessary Extra Expense incurred during the "period of restoration" that the insureds would not have incurred if there had been no direct physical loss or damage to the described premises. See Garin Decl., Ex. A, at ¶ 102. "Extra Expense" is defined under the policy as expenses to "avoid or minimize the suspension of business and to continue operations," and to repair or replace property. See Garin Decl., Ex. A, at ¶ 39.

Importantly, the policies also provide for the following terms and conditions:

#### COMMERCIAL PROPERTY COVERAGE CONDITIONS

\* \* \*

**Terms** means all provisions, limitations, exclusions, conditions, and definitions that apply.

\* \* \*

**10. Suit Against Us--** No suit to recover any loss may be brought against **us** unless:

- a. the **terms** of the Commercial Property Coverage have been fully complied with; and
- b. the suit is commenced within two years after the loss.

\* \* \*

#### WHAT MUST BE DONE IN CASE OF LOSS

**Notice--** In case of a loss, you must:

- a. give us or our agent prompt notice including a description of the property involved (we may request written notice) . . . .

**Protect Property --** You must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. We pay the reasonable costs incurred by you for

necessary repairs or emergency measures performed solely to protect covered property from further damage by a covered peril if a covered peril has already caused a loss to covered property. . .

**Proof of Loss . . .**

**Examination Under Oath . . .**

**Records--** You must produce records, including tax returns and bank microfilms of all cancelled checks, relating to value, loss and expense and permit copies and extracts to be made of them as often as we reasonably request.

**Damaged Property--** You must exhibit the damaged and undamaged property as often as we reasonably request and allow us to inspect or take samples of the property . . .

**Cooperation--** You must cooperate in performing all acts required by the Commercial Property Coverage.

See Garin Decl., Ex. “B” at pp. 24, 37; Ex. “C” at pages 23, 35; Ex. “D” at pp. 26, 33.

Plaintiffs further allege that Badger “has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms” by “wrongfully and illegally refus[ing] to provide coverage” for claims related to COVID-19 “on a uniform and class-wide basis, without individual bases or investigations,” despite Plaintiffs’ and the other putative class members’ purported compliance “with all applicable provisions of the Policies.” See Garin Decl., Ex. A at ¶ 77.

The Complaint asserts four causes of action: two claims for declaratory judgment declaring that (i) the policies provide coverage for Plaintiffs’ and the other putative class members’ business income and extra expense losses stemming from the COVID-19 pandemic, and (ii) Badger is obligated to pay Plaintiffs and the other putative class members for such losses; and two claims for anticipatory breach of contract based on Badger’s purported “uniform and class-wide” denial of coverage for business interruption and extra expense claims “arising from or relating to the COVID-19 pandemic without investigation into the individual circumstances of the claim.” See Garin Decl., Ex. A at ¶¶ 74-107.

1 Remarkably, despite containing over 100 paragraphs spanning twenty-four  
2 pages, the Complaint does not contain a single factual allegation that any of the  
3 Plaintiffs tendered a claim to Badger for business interruption or extra expense  
4 coverage, or that Badger denied any such claim.

### 5 **STANDARD OF LAW**

6 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a  
7 court dismiss a cause of action that fails to state a claim upon which relief can be  
8 granted. See North Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983).  
9 To survive a motion to dismiss, the complaint must plead "enough facts to state a claim  
10 to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570  
11 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that  
12 allows the court to draw the reasonable inference that the defendant is liable for the  
13 misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2007). While the court must  
14 accept as true all well-pleaded factual allegations, the court is not required to accept as  
15 true allegations that are merely conclusory, unwarranted deductions of fact, or  
16 unreasonable inferences. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988  
17 (9th Cir. 2001). "The court need not credit 'mere conclusory statements' or 'threadbare  
18 recitals of the elements of a cause of action.'" Iqbal, 556 U.S. at 678, 681 (citing  
19 Twombly, 550 U.S., at 555). Thus, a court should dismiss a claim where the factual  
20 allegations do not sufficiently "raise a right to relief above the speculative level."  
21 Twombly, 550 U.S. at 555.

22 Generally, a district court may not consider any material beyond the pleadings  
23 when ruling on a Rule 12(b)(6) motion, however, material which is properly submitted as  
24 part of the complaint may be considered on a motion to dismiss. See Hal Roach  
25 Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990)  
26 (citations omitted). Similarly, "documents whose contents are alleged in a complaint  
27 and whose authenticity no party questions, but which are not physically attached to the  
28 pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without

1 converting the motion to dismiss into a motion for summary judgment. See Branch v.  
 2 Tunnell, 14 F.3d 449, 454 (9th Cir. 1994).

### 3 ARGUMENT

#### 4 **A. Plaintiffs Failed to Comply with a Condition Precedent under the Policies,** 5 **and Are Thus Barred from Bringing Suit against Badger**

6 Under Nevada law, “[a]n insurance policy is a contract that must be enforced  
 7 according to its terms to accomplish the intent of the parties.” Farmers Ins. Exch. v.  
 8 Neal, 64 P.3d 472, 473 (Nev. 2003). If an insurance policy is unambiguous, then the  
 9 court interprets it according to the plain meaning of its terms. See Century Sur. Co. v.  
 10 Casino W., Inc., 329 P.3d 614, 617 (Nev. 2014).

11 Nevada law enforces insurance policy provisions that preclude an insured from  
 12 bringing suit until the insured has fully complied with any contractual obligations under  
 13 the policy. See Holland v. State Farm Mut. Auto. Ins. Co., No. 2:12-cv-01058, 2014 WL  
 14 1268712, at \*5 (D. Nev. Mar. 27, 2014) (citing Keys v. State Farm Mutual Auto. Ins. Co.,  
 15 No. 2:12-cv-1181, 2013 WL 3198397, at \* 4 (D. Nev. June 21, 2013)). When an  
 16 insurance policy explicitly makes compliance with a term in the policy a condition  
 17 precedent, the insured bears the burden of establishing compliance with that term. See  
 18 Las Vegas Metro. Police Dep’t v. Coregis Ins. Co., 25 P.3d 958 (Nev. 2011) (citing Ins.  
 19 Co. v. Cassinelli, 216 P.2d 606, 615 (Nev. 1950)); Lucini-Parish Ins. v. Buck, 836 P.2d  
 20 627, 629 (Nev. 1992); see also Brown v. State Farm Fire and Cas. Co., 381 P.3d 597  
 21 (Nev. 2012).

22 In other words, a plaintiff may not successfully claim that an insurer breached an  
 23 insurance policy where, as here, the plaintiff has failed to satisfy a coverage condition  
 24 established within the policy itself. See, e.g., Joseph v. Hartford Fire Ins. Co., No. 2:12-  
 25 cv-798-JCM-CWH, 2014 WL 4829061, at \*3 (D. Nev. Sept. 30, 2014); Keys, 2013 WL  
 26 3198397, at \*3; see also Las Vegas Metro. Police Dep’t, 256 P.3d at 962; Schwartz v.  
 27 State Farm Mut. Auto. Ins. Co., No. 2:07-cv-0060-KJD-LRL, 2009 WL 2197370, at \*7 (D.  
 28 Nev. July 23, 2009) (holding that insured who failed to submit to independent medical



1 examination, as required by policy, was precluded from asserting claim that carrier  
2 breached policy). In Holland v. State Farm Mut. Auto. Ins. Co., for example, the court  
3 held that the plaintiff's failure to comply with the cooperation provision under the subject  
4 insurance policy barred the plaintiffs' lawsuit against State Farm, and further held that  
5 "his attempts during litigation to comply d[id] not cure the defect." 2014 WL 1268712, at  
6 \*5.

7 Similarly, in this case, the relevant policies clearly and unambiguously provide  
8 that "no suit to recover any loss may be brought against us unless the terms of the  
9 Commercial Property Coverage have been fully complied with." See Garin Decl., Ex.  
10 "B" at page 24; Ex. "C" at page 23; Ex. "D" at page 26. One such term requires an  
11 insured to give Badger or its agent "prompt notice" of a loss, "including a description of  
12 the property involved." See Garin Decl., Ex. "B" at page 37; Ex. "C" at page 35; Ex. "D"  
13 at page 33. The Policy's express language therefore unambiguously requires that the  
14 insured provide "Notice" of a "Loss" to Badger as a condition precedent to filing suit  
15 under the Policies.

16 Here, however, Plaintiffs do not – and cannot – allege that they satisfied this  
17 condition precedent. Perhaps recognizing this fatal deficiency, Plaintiffs attempt to  
18 distract the Court by suggesting that filing a claim is not necessary and that "the Court  
19 can render declaratory judgment no matter whether members of the Class have filed a  
20 claim." See Garin Decl., Ex. "A" at ¶¶ 78, 97. This assertion, however, is directly  
21 contrary to the unambiguous language of the policies, which requires Notice of a Loss  
22 to Badger, and is contrary to well-established Nevada law.

23 Given that the Complaint is devoid of any allegation that any Plaintiff complied  
24 with the material condition precedent of providing Notice to Badger of a Loss, Badger is  
25 entitled to dismissal of the Complaint in its entirety.

26 ///

27 ///

28 ///



**B. Plaintiffs Have Not Alleged Any Conduct Indicating that Badger Would Not or Could Not Substantially Perform Its Duties under the Policies**

Even if Plaintiffs had complied with the Notice of Loss condition precedent, which they did not, Plaintiffs' claims herein would nonetheless be subject to dismissal for failure to state a claim for anticipatory breach of contract.

In Nevada, an anticipatory breach is a breach of a contract that occurs when one party to the contract, without justification and prior to a breach by the other party, makes a statement or engages in conduct indicating that it will not or cannot substantially perform its duties under the contract. See Shaw v. CitiMortgage, Inc., 201 F. Supp. 3d 1222, 1250 (D. Nev. 2016) (citing Kahle v. Kostiner, 85 Nev. 355, 455 P.2d 42, 44 (1969)); see also Stratosphere Litigation, L.L.C. v. Grand Casinos, 298 F.3d 1137, 1147 (9th Cir. 2002) (holding that an "[a]nticipatory repudiation occurs when a party through conduct or language makes a clear, positive and unequivocal declaration of an intent not to perform.").

Here, Plaintiffs vaguely allege that "many state departments of insurance have issued advisories to business owners that COVID-19 is not an insured peril and there will be no coverage for business interruption . . . to discourage business owners from filing claims." See Garin Decl., Ex. "A" at ¶ 49. Plaintiffs further allege in conclusory fashion that Badger "upon information and belief . . . is and has been denying coverage for any sort of business interruption claim arising from or relating to the COVID-19 pandemic without investigation into the individual circumstances of the claim." Id. at ¶¶ 89, 105. These threadbare, conclusory allegations, however, provide not one iota of fact indicating that Badger has not performed or will not substantially perform its duties under the Policies, much less announced the requisite clear, positive, and unequivocal declaration of an intent not to perform. See Stratosphere Litigation, L.L.C., 298 F.3d at 1147. Indeed, a plain reading of the Complaint reveals that, aside from Badger's issuance of the insurance policies to Plaintiffs, the Complaint is virtually devoid of any specific factual allegations of conduct by Badger, let alone any factual allegations regarding Badger's adjustment of business interruption and extra expense claims

1 relating to COVID-19.

2 Simply put, Plaintiffs' conclusory allegations are legally insufficient to allege a claim  
3 for anticipatory breach of contract and, as such, Plaintiffs' Second and Fourth Counts  
4 must be dismissed. See Iqbal, 556 U.S. at 678, 681 (noting that "[t]hreadbare recitals of  
5 the elements of a cause of action, supported by mere conclusory statements, do not  
6 suffice").

7 **C. Plaintiffs' Declaratory Judgment Claims Must be Dismissed Because**  
8 **the Declaratory Judgment Act Does Not Create New Substantive**  
9 **Rights**

10 Plaintiffs' First and Third Counts, seeking declaratory relief, must also be  
11 dismissed because the underlying anticipatory breach of contract claims fail and the  
12 Declaratory Judgment Act "does not create new substantive rights, but merely expands  
13 the remedies available in federal courts." Shell Gulf of Mexico Inc. v. Ctr. for Biological  
14 Diversity, Inc., 771 F.3d 632, 635 (9th Cir. 2014).

15 The Declaratory Judgment Act provides, in pertinent part:

16 In a case of actual controversy within its jurisdiction . . . any  
17 court of the United States, upon the filing of an appropriate  
18 pleading, may declare the rights and other legal relations of  
any interested party seeking such declaration, whether or  
not further relief is or could be sought.

19 28 U.S.C. § 2201(a). While the Declaratory Judgment Act allows federal courts to  
20 declare the rights and other legal relations of interested parties, see Nelson v. XL Am.,  
21 Inc., 2:16-cv-00060-JAD-GWF, 2017 WL 4185461, at \*7 (D. Nev. Sept. 21, 2017), it  
22 "does not create new substantive rights, but merely expands the remedies available in  
23 federal courts." Shell Gulf of Mexico Inc. v. Ctr. for Biological Diversity, Inc., 771 F.3d  
24 632, 635 (9th Cir. 2014); see also Stock W., Inc. v. Confederated Tribes of the Colville  
25 Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989) ("Stock West cites in its complaint the  
26 Declaratory Judgment Act, 28 U.S.C. § 2201, as a basis for jurisdiction. But this Act  
27 only creates a remedy and is not an independent basis for jurisdiction."). Indeed, "it is  
28 the underlying cause of action . . . that is actually litigated in a declaratory judgment

1 action.” Shell Gulf of Mexico Inc., 771 F.3d at 636 (citing Collin Cnty., Tex. v.  
 2 Homeowners Ass’n for Values Essential to Neighborhoods, 915 F.2d 167, 171 (5th Cir.  
 3 1990)).

4 Here, Plaintiffs seek a declaratory judgment declaring that the COVID-19  
 5 pandemic and the corresponding response by civil authorities to stop the spread of the  
 6 virus outbreak triggers coverage for Business Income and Extra Expense losses under  
 7 the policies, and that Badger is obligated to pay Plaintiffs for such losses “no matter  
 8 whether members of the Class have filed a claim.” See Garin Decl., Ex. “A” at ¶¶ 78,  
 9 80, 96, 98. Since Plaintiffs’ underlying claims for anticipatory breach of contract  
 10 (Counts Two and Four) fail for the reasons set forth above, however, Plaintiffs’  
 11 remaining claims for declaratory judgment (Counts One and Three) must also fail  
 12 because the Declaratory Judgment Act only creates a remedy for a substantive claim; it  
 13 does give rise to new substantive rights. See Shell Gulf of Mexico Inc., 771 F.3d at 635.  
 14 As such, Plaintiffs’ First and Third Counts for declaratory relief fail to state a claim upon  
 15 which relief can be granted and must be dismissed.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///


Lipson Neilson P.C.  
 9900 Covington Cross Drive, Suite 120  
 Las Vegas, Nevada 89144  
 (702) 382-1500 – fax (702) 382-1512

**CONCLUSION**

For the reasons set forth above, Badger respectfully request that the Court enter an order pursuant to the Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint in its entirety, along with such other and further relief as this Court may deem just and proper.

DATED this 26<sup>th</sup> day of May, 2020.

LIPSON NEILSON P.C.



By: \_\_\_\_\_

JOSEPH P. GARIN, ESQ.  
Nevada Bar No. 6653  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

RIVKIN RADLER LLP  
MICHAEL A. TROISI, ESQ. (*Pro Hac Vice Pending*)  
BRIAN L. BANK, ESQ. (*Pro Hac Vice Pending*)  
926 RXR Plaza  
Uniondale, NY 11556-0926

*Attorneys for Defendant*

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of May, 2020, service of the foregoing  
**DEFENDANT BADGER MUTUAL INSURANCE COMPANY'S MOTION TO DISMISS**  
**PLAINTIFFS PROJECT LION LLC, PROJECT M LLC, AND PROJECT W LLC'S**  
**COMPLAINT** was made upon each party in the case who is registered as an electronic  
case filing user with the Clerk, pursuant to Fed. Rule Civ. P. 5(b)(3), and Local Rule 5-4,  
as follows:

David C. O'Mara, Esq.  
The O'Mara Law Firm, P.C.  
311 E. Liberty Street  
Reno, NV 89501  
[david@omaralaw.net](mailto:david@omaralaw.net)

James E. Cecchi, Esq.  
Lindsey H. Taylor, Esq.  
CARELLA, BYRNE, CECCHI OLSTEIN,  
BRODY & ANGELLO  
5 Becker Farm Rd.  
Roseland, NJ 07068

Christopher A. Seeger, Esq.  
Stephen A. Weiss, Esq.  
SEEGER WEISS  
77 Water Street, 8<sup>th</sup> Floor  
New York, NY 10005

Samuel H. Rudman, Esq.  
ROBBINS GELLER RUDMAN & DOWD LLP  
58 South Service Rd., Suite 200  
Melville, NY 11747  
[srudman@rgrdlaw.com](mailto:srudman@rgrdlaw.com)

Paul J. Geller, Esq.  
ROBBINS GELLER RUDMAN & DOWD LLP  
120 E. Palmetto Park Rd., Suite 500  
Boca Raton, FL 33432  
[e\\_file\\_fl@csgrr.com](mailto:e_file_fl@csgrr.com)

*Attorneys for Plaintiffs*

/s/ Kim Glad

\_\_\_\_\_  
An employee of  
Lipson Neilson P.C.

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 – fax (702) 382-1512